REMARKS

Reconsideration and allowance of he claims in this application are respectfully requested.

Page 5 of the specification has been amended to correct a typographical error. The link 81 was incorrectly identified as "link 80". But the reference numeral 80 does not appear in the drawing or elsewhere in the specification. The second pivoting link should be identified by the reference numeral 81.

Claims 1, 3-6, 10, 12 and 19 have been amended to correct typographical errors.

In claims 1, 3, 4 and 6, "portable" has been deleted to avoid a possible ambiguity because the invention is initially and variously defined simply as a "climbing aid" in these claims.

In claims 5, 10 and 19, the edge of the first step adjacent to the second support block incorrectly identified as "its rear edge". To correct this error, "rear" has been changed to "front".

In claim 8, a double occurrence of the word "said" has been corrected.

In claim 12, "said" has been inserted where it had been previously omitted.

In claims 13 and 17, the wording defining the tab 84 has been changed.

The indicated allowability of dependent claims 3, 5-7, 10, 11 and 13 is noted. Applicant believes that persuasive arguments will be presented hereinafter that will result in allowance of the parent claims of these dependent claims. Accordingly, converting these dependent claims to independent form has been postponed.

Claim 16 has been rejected under 35 U.S.C. 103(a) as unpatentable over Robinson. It is contended that the only claimed structure not disclosed by Robinson is a second handrail. It is not apparent how a second hand rail that is identical to the Robinson side rail 10 could be added in a way that would enable the inwardly facing surfaces of the two hand rails to be in substantial contact with each other when the Robinson porch is in its folded position, as is required by claim 16. As is obvious from Figs. 3-5 of Robinson, if a second handrail identical to the side rail 10 were to be attached to the opposite side of the Robinson porch, the second handrail would project above and beyond the rail member 14 when the porch is in its folded position.

This rejection also completely ignores the following wording from claim 16:

"a beam connecting the legs of one of said handrails, said beam comprising a flat panel spanning the distance separating the legs of said one handrail, said flat panel having an outwardly facing surface that is aligned with the outwardly facing surface of said one handrail, said flat tread surfaces of said steps being aligned with said outwardly facing surface of flat panel so as to form with said outwardly facing surface of said flat panel and said outwardly facing surface of said legs an essentially continuous flat surface that fills a substantial portion of the space between the legs and bar of said one handrail when said portable climbing aid is in said folded position".

There is no beam in Robinson like applicant's flat panels 57 and 58 that is aligned with the legs and substantially fills the space between the legs and hand bar of any hand rail. Also as shown in Fig. 3 of Robinson, the outwardly facing surface of the angle iron 44 is not aligned with any flat tread surface of either of the platform 20 or the step 30.

Claims 1, 2, 4 and 14 have been rejected under 35 U.S.C. 103(a) as unpatentable over de La Tour in view of Koch. It is contended that the de La Tour ladder steps 60 and 66 could be modified by unattaching one of their ends, and that the unattached ends would be supported on bars like the bars 5c of the Koch chair, but first the bars 5c of Koch would be cut into four short segments. Applicant's disclosure is the blueprint for this unlikely combination of the parts from unrelated devices, and use of the hindsight gained from an applicant's own disclosure may not be used to support an obvious rejection under 35 U.S.C. 103(a). See *W. L. Gore and Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303, 312-313 (Fed. Cir. 1983).

But even if it were to be assumed for the purpose of a detailed analysis that the proposed combination of de La Tour and Koch were proper, the obviousness rejection would still fail. The Koch seat 9 is supported by the forked brace 12 and not by the bar 5c. If the underside or bottom surface of the unattached end of the Koch seat 9 were to be supported by the bar 5c, then the bottom surface of seat 9 would rest on top of the hinge plates 13 and not directly on the bar 5c. Since the top of the hinge plates 13 is higher than either bar 5c, then the upper surface of the unattached end of seat 9 would be raised above the upper surface of the attached end of seat 9. Thus the surface of the chair on which people sit would not be horizontal. This tilted seating surface would make the chair uncomfortable. Therefore, the unattached end of the Koch seat 9 would have to terminate short of the bar 5c in order for the seat 9 to be horizontal. The unattached end of seat 9 is thus obviously supported on the forked brace 12 and not on the bar 5c.

But even if it were to be further assumed for the purpose of a more detailed analysis that Koch teaches supporting an unattached chair seat directly on top of a horizontal bar, this teaching could not be used successfully to modify the de La Tour ladder 10. The upright side portions 12 and 14 of the de La Tour ladder are held together at the bottom by the transverse base members 20 and 22. The upper part of the ladder is held together by the steps 60 and 66, which are attached to the support members 62. Also, the steps 60 and 66 are hinged in their center at 63 to permit folding of the ladder. If, as would be necessary for the proposed modification of de La Tour, one end of each step were to be unattached from its support member 62, and the unattached ends would then rest on a bar like the bar 5c of Koch. The result would be that there would be nothing holding the side portions 12 and 14 together. The resulting ladder would be inherently unstable. Any jostling or sidewise movement by a person of limited mobility using the modified ladder would cause the steps 60 and 66 to slide off of the Koch bars 5c, and movement of the steps 60 and 66 off the bars 5c would cause the seats to collapse downwardly on the hinges 63. Thus the proposed Koch modification would render the de La Tour ladder inherently dangerous, and hence inoperative.

The use of Koch to reject the claims herein also requires the modification of Koch by cutting the bars 5c so that each bar becomes two separated bushings. Cutting each of the bars 5c into two short bushings would remove the horizontal supporting structure at the upper part of the Koch chair. It is not reasonable to base a rejection on the assumption that one skilled in the art would make a change like this that would weaken the structure of his chair and make it unstable.

In addition, claim 1 requires specifically located connections by the first link 77 and the second link 81. There are no links in Koch that are connected in the same way as to the links 77 and 81.

In addition, claim 2 requires that when it is in the folded position, no part of the invention will extend beyond the handrails. As is obvious from Figs. 15 and 16 of de La Tour, many parts of his ladder extend beyond the handrails.

In addition, claim 4 requires specific connections to the first post 60 and the second post 61. There is no Koch structure like the first and second posts.

In addition, claim 14 requires that the inwardly facing surfaces of the handrails be in substantial contact with each other when the invention is in the folded position with the steps and links being confined within the handrails with no part of the steps and links extending past the outwardly facing surfaces of the handrails. As pointed out previously, Figs. 15 and 16 of de La Tour show several parts extending outside of the side portions 12 and 14.

Claims 8 and 9 have been rejected under 35 U.S.C. 103(a) as unpatentable over de La Tour in view of Koch and further in view of Robinson. In addition to the reasons given above as to why the modifications of de La Tour and Koch as proposed to reject claim 1 are improper, claim 8 requires specific connections by the second link 81. There is no link in Koch or Robinson that is connected in the same way as to the second link 81.

In addition, claim 9 requires specific connections to the first post 60 and to the second post 61. There is no Koch or Robinson structure like the first and second posts.

Claim 12 has been rejected under 35 U.S.C. 103(a) as unpatentable over Robinson in view of Koch. In addition to the reasons given above as to why the modifications of Koch, and any modifications using Koch, as proposed to reject claims herein are improper, Robinson lacks the basic structure required by claim 12. Robinson has only one handrail. Also, there is no link that is connected in the same way as to the second link 81. Also, there are no post connected like the first and second posts 60 and 61. Also, there is no flat panel that has an outwardly facing surface that is aligned with an outwardly facing surface of a first handrail. The Robinson steps do not have flat tread surfaces that are aligned with an outwardly facing surface of the flat panel so as to form with the outwardly facing surface of the flat panel, and the outwardly facing surface of the first handrail, an essentially continuous flat surface that fills a substantial portion of the space between the legs and bar of the first handrail when the invention is in its folded position.

Newly submitted claims 21 and 22 are similar to claim 5 in that they include unobvious links and connections, such as the first and second articulated links 91 and 98, that are unlike any corresponding prior art structure.

Newly submitted dependent claim 23 is similar to claim 6 in that it includes the flanges 32 and 33 having notches 36 and 37 for engaging the bushings 70 and 72.

It has thus been shown that claims 1, 2, 4, 8, 9, 12, 14 and 16 have not only been rejected on improper combinations of the teachings of prior art references, but these claims also require specific structure that is not disclosed by the prior art. Claims 17-20 have been allowed and claims 3, 5-7, 10, 11 and 13 indicated as being allowable. Accordingly applicant requests that a Notice of Allowability be mailed promptly in view of the Special status of this application.

October 29, 2004

30 N. Nanagosa Trail
Suttons Bay, MI 49682
(231) 271-6868
email kaplanpat@mac.com

Respectfully submitted,
Charles M. Kaplan
Charles M. Kaplan
Attorney for Applicant

OIPE JC133
NOV 0 1 2004
PATENT & TRADEMARK OFFICE

CERTIFICATE OF MAILING

I, Charles M. Kaplan, hereby certify that the foregoing Amendment has been deposited with the U.S. Postal Service, with adequate first class postage prepaid, in an envelope addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, this 29th day of October, 2004.

By Charles M. Kaplan
Charles M. Kaplan
Registration No. 19,416
Customer Number 24236